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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,229	09/29/2003	Takako Fujii	B-5248 621294-8	9863
36716	7590	07/15/2008		
LADAS & PARRY 5670 WILSHIRE BOULEVARD, SUITE 2100 LOS ANGELES, CA 90036-5679			EXAMINER STEPHENS, JACQUELINE F	
			ART UNIT	PAPER NUMBER
			3761	
			MAIL DATE	DELIVERY MODE
			07/15/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/675,229

**Applicant(s)**

FUJII ET AL.

**Examiner**

Jacqueline F. Stephens

**Art Unit**

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 March 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-7 and 17-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,3-7 and 17-19 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 10/31/07 have been fully considered and they are partially persuasive. Applicant argues the tissue layers 24 and 36 of Wehrmeyer are not absorbent material. The Examiner respectfully disagrees. Tissue layers used in absorbent articles are typically constructed of cellulosic materials, which are absorbent materials. Applicant argues tissue layers 24 and 26 form an envelope around absorbent 22 unlike the claimed upper and lower, which are not connected and are unable to form an envelope. Although tissue layers 24 and 26 form an envelope, they still meet the limitation of an upper and lower layer. The claims do not require the layers to be separate. Applicant further argues Wehrmeyer does not show high and low density areas in the tissue layers. Wehrmeyer teaches high and low density regions in the pad 12 including batt 22 and tissues 24 and 26 (col. 5, lines 23-31). Claim 1 requires the lower layer have a higher density than that of the upper layer. At least a portion of the lower layer has a higher density than at least a portion of the lower density portions of the upper layer.

Arguments regarding the width and length of the upper and lower layers are persuasive.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4-8, 11, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wehrmeyer et al. USPN 3908659 in view of Nystrand et al. USPN 3667468. Wehrmeyer teaches a body fluid absorbent diaper 10 (col. 3, lines 58-61) comprising absorbent pad 12/22 sandwiched between moisture pervious top sheet 14 and impervious barrier 16 (col. 4, lines 4-15), wherein the absorbent pad includes upper tissue layer 24 and lower tissue layer 26/46 (col. 5, lines 3-6, Figures 2-3); wherein the lower layer 26 has a higher density than that of the upper layer by forming indented recesses in the lower layer (col. 5, lines 23-31; col. 6, lines 55-66, Figure 2). The recesses have an emboss percentage of 12-50% (col. 5, lines 15-23) for a desired balance of softness and absorbency (col. 5, lines 20-22). Wehrmyer inherently has recess angle of inclination, upper layer density, and spacing distance values in the claimed ranges since where the claimed and prior art products are identical or substantially identical processes, a prima facie case of either anticipation or obviousness as been established. In re Best, 562 F.2d 252, 1255, 195 USPQ 430, 433 (CCPA 1977). Wehrmeyer further discloses recesses are formed in the absorbent 22 (Figures 2-3).

Wehrmeyer does not teach the lower layer width is greater than the upper layer width. Nystrand teaches an absorbent having upper and lower layers where the lower layer has a width larger than the upper layer forming a c-fold configuration. Nystrand

teaches this configuration is beneficial because it orients the body fluid dispersion path along the length of the napkin and discourages over-saturation in one central area. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Wehrmeyer to have a lower layer width larger than the upper layer width. Doing so would provide a construction that inhibits lateral leakage (Nystrand col. 1, line 50 through col. 2, line 10).

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wehrmeyer et al. (US 3,908,659) in view of Fitzgerald (US 4,435,178). Wehrmeyer does not expressly disclose the recesses are on the body side of the lower layer. Fitzgerald discloses absorbent sanitary napkin 10 having an absorbent core 12 disposed between body fluid permeable body-side top sheet 34 (column 3, lines 14-18) and water impervious material 26 which overlies back member 24 (column 3, lines 9-11) and is laid on top of the core (column 4, lines 4-6); wherein the absorbent core has upper layer 14 coextensive with lower layer 16 and having recesses 18 formed on the body-facing side to accommodate gushes of fluid and improve absorption of bodily fluids (column 3, lines 24-28, figure 1), compressed grooves/recesses 19 formed on the garment-facing side (column 2, lines 40-68, figure 1), wherein squeeze-out portions are formed on both sides of lower layer 16 in areas outside recesses 18 (figure 1), wherein lower layer 16 inherently has higher density than upper layer 14 and a higher density than the squeeze-out portions lying outside recesses since the lower layer contains recesses 18, 19. Fitzgerald further discloses the recesses and compressed portions are

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desirable to easily receive and prevent gushes of waste fluid from gushing through the pad, and thus enhancing body fluid distribution (column 2, lines 11-16). One would be motivated to modify the honeycomb recesses with surface area percentages of Wehrmeyer with the body side lower layer recesses of Fitzgerald for improved fluid absorbency since the references both disclose multi-layered recessed absorbent cores for use in personal wearing articles. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the absorbent layer, thus providing a recessed body side lower layer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jacqueline F Stephens/

Primary Examiner, Art Unit 3761